



ETQ Master Subscription Agreement (MAU)

This Master Subscription Agreement governs Customer's purchase, use of and access to the Services. The Agreement is by and between ETQ, LLC, a Delaware limited liability company with offices at 700 District Ave, 9th Floor, Burlington, MA 01803 ("ETQ") and the company or other legal entity accepting this or represented by the individual that accepts the Agreement ("Customer"). By entering into an Order Form that references this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement. The Agreement governs Customer's and its Affiliates' and each of its and their Active Users' use of and access to the Services.

The Agreement was last updated on December 15, 2019 and is made effective between Customer and ETQ as of the date Customer executes an Order Form ("**Effective Date**") by executing an Order Form.

DEFINITIONS.

"**Active User**" means a unique user that accesses the Services at least one time during a month regardless of the location from which the Services are accessed. Active Users shall be limited to Customer's and its Affiliates' employees, agents and independent contractors, provided that any such employee, Affiliate, agent or independent contractor (individual person and entity) shall first be subject to written obligations of confidentiality which provide substantially the same protection as Section 8 (Confidentiality) and Customer has paid ETQ a fee for each Active User; and any such agent or independent contractor shall not be a competitor of ETQ or acting on behalf of a competitor of ETQ. Customer shall be responsible for all access to and use of Customer's instance of the Services and Documentation and for the acts of all Active Users.

"**Affiliate**" means a person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the specified person. Such person is an Affiliate only so long as such Control exists. "**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Master Subscription Agreement ("**MSA**"), all executed Order Forms, and all terms and conditions referenced herein or in an Order Form, and any other ETQ policies or agreements that reference this Agreement, including the Customer Support Policy, Acceptable Use Policy, and Master Professional Services Agreement, to the extent applicable.

"**Confidential Information**" means all information disclosed by a party to the Agreement ("**Disclosing Party**") to the other party to the Agreement ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Without limitation, the Services, Documentation, and the ideas, concepts, know-how, techniques, inventions, processes, designs, methods, discoveries and improvements reflected or embodied therein, ETQ business information, ETQ business plans and ETQ financial information constitute and comprise Confidential Information and trade secrets of ETQ. Customer Data shall constitute and comprise Confidential Information of Customer.

"**Customer Data**" means any data entered into, processed by, or outputted from the Services, as a result of the authorized operation of the Services by Customer or any Active Users, excluding any component of the Services or Documentation itself, whether a Modification, extension, configuration, enhancement, derivative, improvement or otherwise.

"**Documentation**" means any non-public manuals, specifications, instructions, or other materials in any medium, describing the functionality or operation of the Services and made available to Customer under the Agreement. Documentation is considered Services solely for purposes of Sections 2 (Intellectual Property and Licenses) and 8 (Confidentiality).

"**Order Form**" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and ETQ, including any addenda and supplements thereto.

"**Read-Only User**" means an Active User permitted access to and use of the Services solely for the limited purpose of viewing documents created using the Services or residing within the Services.

"**Services**" means the products and services that are ordered by Customer under an Order Form and made available online by ETQ, including associated ETQ offline or mobile components, as described in the Documentation.

1. SERVICES.

1.1. Provision of Services. ETQ will make the Services and Documentation available to Customer pursuant to the Agreement. Customer may permit its Affiliates and its and their employees, agents and independent contractors to access and use the Services as Active Users subject to Section 1.6 (Active User Calculation), provided that Customer shall be responsible for the payment of all fees and costs associated therewith, shall ensure the compliance by any such Affiliate and Customer's and its Affiliates' Active Users with the terms and conditions of the Agreement, and shall be jointly and severally liable for any breach of the terms and conditions of the Agreement by any of the foregoing. ETQ shall provide customer support with each Subscription License (defined below) for the applicable Subscription Term (defined below) in accordance with the Terms and Conditions of Customer Support set forth at <https://www.etq.com/pdf/legal/etq-terms-and-conditions-of-customer-support.pdf> and incorporated herein by reference, and at the customer support level set forth in the applicable Order Form. ETQ will use commercially reasonable efforts to make the Services available in accordance with the ETQ Services Availability Commitment set forth at <https://www.etq.com/pdf/legal/etq-services-availability-commitment.pdf> and incorporated herein by reference. Customer may purchase professional services for implementation and/or configuration of the Services for Customer's internal business needs, which professional services shall be governed by the Master Professional Services Agreement set forth at <https://www.etq.com/pdf/legal/etq-master-professional-services-agreement.pdf> and incorporated herein by reference.



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- 1.2. Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services are purchased as subscriptions, (b) subscriptions for Services or additional Active Users may be added during a subscription term at ETQ's then-current pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- 1.3. License Grant.** ETQ hereby grants to Customer, and Customer hereby accepts, subject to the terms and conditions of the Agreement, a non-exclusive and nontransferable (subject to Section 12.1 (Assignment)) license to access and use a single production instance of the Services and Documentation solely for its intended purpose as described in the Documentation and as permitted by the Agreement ("**Subscription License**"), in each case for the duration of the term specified in the applicable Order Form and any renewal thereof pursuant to Section 6.2 (Subscription Terms) (the "**Subscription Term**") and by no more than the number of Active Users specified in the applicable Order Form for which Customer has purchased Subscription Licenses. No other use of the Services or Documentation is permitted.
- 1.4. Documentation License.** Customer is granted a nonexclusive and nontransferable (subject to Section 12.1 (Assignment)) license for each Active User to download and use a single copy of the Documentation in connection with its use of the Services, subject to all restrictions applicable to the Services, except that each Active User may make a single copy of the Documentation solely for backup or archival purposes. Customer shall reproduce and include ETQ's copyright and other proprietary rights notices on any such copies, including partial and physical copies in any form. Documentation includes downloadable documents, videos and interactive wizards and any other media which describes the functionality and usability of the Services.
- 1.5. Mobile Application.** Customer's Active Users may also access ETQ's Mobile Application. Use of the Mobile Application shall be governed by the Mobile App Terms and Conditions contained in the Mobile App and located at <https://www.etq.com/pdf/legal/etq-mobile-app-terms-and-conditions.pdf> and incorporated herein by reference. Use of the Mobile App will count towards the Active User Usage Calculation in Section 1.6 below.
- 1.6. Active User Usage Calculation.** Use of the Services is subject to the number of Active Users as calculated on a monthly basis. At the end of each month, ETQ will count the number of Active Users accessing the Services and compare it against the number of purchased Active Users. If Customer exceeds its number of purchased Active Users in more than two months during a Subscription term, ETQ will invoice Customer for any Active Users in excess of the number of purchased Active Users at ETQ's then-current rates. If Customer does not timely pay for such additional Active Users, ETQ may, in its sole discretion, suspend Customer's and its Affiliates' and its and their Active Users' access to the Services or terminate the Agreement in accordance with Section 6 (Term and Termination).
- 1.7. User IDs and Logins.** Any user login and other ID for the Services may not be shared or used by more than one individual during any given period of time. However, Customer may reallocate or reassign user logins or IDs from time to time, as reasonably necessary to accommodate changes in personnel and duties. Customer is responsible and liable for all access to and use of the Services through any user login or other ID assigned to Customer or otherwise used to access the Services made accessible to Customer. Customer shall maintain Customer's user IDs and passwords as strictly confidential and not disclose them to any third party. Customer shall notify ETQ immediately of any unauthorized use of any user login or other ID assigned to Customer, or any other actual or suspected breach of security related to the Services of which Customer becomes aware
- 1.8. Modifications.** Notwithstanding the foregoing, Customer may create or request that ETQ create modified versions or configurations of the forms, workflows, or routings contained in the databases originally supplied in the Services and as permitted by the functionality of the Services (collectively, "**Modifications**"). Such Modifications are limited to customizing only those forms, workflows, or routings contained in the databases as originally supplied in the Services, solely as permitted by the functionality of the Services and solely for their original intended purpose as dictated by the Service's original configuration. ETQ shall own all rights, including intellectual property rights, in and to the Modifications. To the extent Customer owns any rights, including intellectual property rights, in and to any Modifications, Customer hereby assigns them to ETQ. Customer shall have a license to use Modifications to the same extent that Customer has a license to use the Services pursuant to the Agreement and Modifications shall be deemed part of the Services, subject to all restrictions contained in the Agreement.
- 1.9. Restrictions.**
- 1.9.1 Usage Restrictions.** Except as expressly permitted by the Agreement, Customer shall not: (a) reverse assemble, reverse engineer, decompile, or otherwise translate, use, copy, modify, prepare derivative works from, transmit or distribute by any means any portion of the Services; (b) rent, lease, sublicense or transfer the Services or the use thereof to any third party; (c) charge, or allow others to charge, any third party for use of the Services; (d) use the Services in the operation of a service bureau or time-sharing arrangement, or otherwise allow direct or indirect use of the Services (including via the Internet) to generate revenue for Customer; (e) defeat or attempt to defeat any security mechanism of the Services or knowingly permit any third party to do so; (f) use the Services to store, send, or provide access to obscene or otherwise illegal materials or to store, send, or provide access to materials that would infringe upon any intellectual property rights or violate any privacy rights of any third party; (g) use the Services in any other manner that does not comply with applicable laws, rules, and regulations; (h) use the Services to store or transmit malicious or disruptive code; (i) copy the Services or any part, feature, function or user interface thereof or frame or mirror any part of any Services; (j) access or use the Services for benchmarking or similar competitive analysis purposes or in order to build a competitive product or service; or (k) breach ETQ's Acceptable Use Policy, available at <https://www.etq.com/pdf/legal/etq-acceptable-use-policy.pdf> and incorporated herein by reference. The Services may contain



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or rely on components that are owned by ETQ or third parties and have been licensed to ETQ. Customer may not use the components other than through Customer's use of the Services as expressly permitted by the Agreement. ETQ is required to publish the disclaimers, notices and other terms applicable to such third party software, which are viewable in the Service's "About" screen, and Customer agrees to same to the extent required therein. Any prohibitions or limitations in the Agreement that apply to Customer shall apply equally to Customer's Affiliates and its and their Active Users.

1.9.2 Customer's Responsibilities. Customer shall be solely responsible for (a) ensuring and preserving the truthfulness, accuracy, quality, legality, and secrecy of Customer Data, and (b) ensuring that Customer Data does not infringe or misappropriate any trade secret, or violate or contravene any applicable laws, rules, or regulations. Customer further agrees, represents, and warrants that it has obtained binding consents and approvals from all necessary persons, authorities, or individuals, and has complied with all applicable laws, rules, and regulations to allow ETQ to use the Customer Data to provide Services under the Agreement.

1.9.3 Suspension of Access. ETQ may immediately suspend or disable access to and use of the Services if, as a result of Customer's or its Affiliates' or its or their Active Users' use of the Services or breach of the Agreement, ETQ reasonably believes: (a) it is likely to be subject or exposed to criminal or civil sanctions, prosecution or suit; or (b) such use or breach is likely to cause harm to ETQ or ETQ's other customers or their respective employees or interfere with the integrity, operations or security of the Services or ETQ's network or systems or those with which ETQ is interconnected, or interfere with another customer's use of any of the foregoing. ETQ may also suspend or disable access to and use of the Services if required in order to comply with a court order or government requirement. In the exercise by ETQ of its right to act immediately under this Section 1.9.3, ETQ shall provide as much advance notice as is reasonably practicable under the circumstances. If advance notice is not reasonably practicable, ETQ shall provide subsequent notice promptly thereafter. Customer shall promptly cooperate with ETQ in attempting to resolve the issue giving rise to any suspension or disablement of access to and use of the Services. The foregoing shall be in addition to the termination rights of either party hereunder.

2. Customer Data

2.1. Protection of Customer Data. ETQ will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in its Security Standards available at <https://www.etq.com/pdf/legal/etq-security-standards.pdf>. The terms of ETQ's data processing addendum at <https://www.etq.com/pdf/legal/etq-data-processing-addendum.pdf> ("DPA") are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA. ETQ, its Affiliates, and its third-party service providers that perform services in connection with ETQ's performance of this Agreement may evaluate Customer's use of the Services, which may include Customer Data solely to the extent necessary for such evaluation. Further, ETQ may use Customer Data solely to the extent necessary to improve the Services. ETQ may also use Customer Data in an aggregated and anonymized form to derive statistical and performance information related to the Services, which it may freely use and disclose in an aggregated and anonymized form, provided that it does not include any data that would reveal the identification of Customer, Customer Data or any other Customer Confidential Information.

2.2. Instance Snapshot. On a daily basis, ETQ shall use commercially reasonable efforts to take a snapshot of the entire AWS instance stored on separate Amazon S3 volumes. This type of backup is intended to enable Customer to restore an entire instance in the unlikely event of an entire instance failure. For clarification, ETQ's backup procedures described in this paragraph are not intended to function as an archiving service to make available any given day's or week's data, but are instead intended to aid in disaster recovery. ETQ shall not be obligated to retain any instance snapshot older than thirty (30) days.

2.3. Return of Customer Data. ETQ shall, at no additional charge, upon receiving a request from Customer no later than thirty (30) days after the earlier of the effective date of termination or expiration of the Agreement or the Services (either, the "End Date"), provided that Customer has paid ETQ any outstanding amounts then payable under the Agreement, make available to Customer for downloading or physical delivery, a file in a mutually agreed upon format containing Customer Data as it exists within the Services on the End Date. After such thirty (30) day period, ETQ shall have no obligation to maintain or provide any Customer Data and may, unless prohibited by applicable law, delete all Customer Data in the Services or otherwise in its possession or control.

3. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES.

3.1. ETQ's Intellectual Property. The Services and Documentation are licensed, not sold. Subject to the limited license rights expressly granted hereunder, ETQ and its licensors reserve all right, title, and interest in and to the Services and Documentation and the intellectual property rights therein, including all copyrights, trade secrets, trademarks, patents, ideas, concepts, know-how, techniques, inventions, discoveries, improvements and other intellectual property and proprietary rights therein throughout the world. Customer has the right to access and use the Services and Documentation subject to the terms and conditions of the Agreement. Except for the limited license rights granted in the Agreement, Customer has no rights in or to the Services, Documentation, or any copies thereof. Customer shall protect and prevent unauthorized access to and use of the Services (including any embedded components), and will notify ETQ immediately of any such unauthorized access or use. ETQ reserves all rights not expressly granted to Customer in the Agreement.



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3.2. Customer Data. As between the parties, Customer owns and shall retain all right, title, and interest in and to the Customer Data. During the term of the Agreement, Customer grants ETQ a worldwide, non-exclusive, royalty-free license to host, copy, store, process, transmit, display and otherwise use Customer Data as reasonably necessary for ETQ to provide, and ensure proper operation of, the Services and to fulfill its obligations under the Agreement.

3.3. Suggestions; Feedback. During the course of the Agreement or otherwise, Customer may provide, or ETQ may solicit, input regarding the Services, including comments, feedback or suggestions regarding the possible creation, modification, configuration, correction, improvement or enhancement of the Services, ETQ's website or any of ETQ's or ETQ's Affiliates' products or services, or their operation, functions or features (collectively, "**Feedback**"). Any information ETQ discloses to Customer related to or in response to Feedback shall be protected as Confidential Information of ETQ subject to the protections of Section 8 (Confidentiality). Customer agrees that ETQ shall own all right, title, and interest in and to the Feedback including all intellectual property rights therein, even if Customer has designated the Feedback as confidential. ETQ and its Affiliates will be entitled to use the Feedback without restriction. Customer hereby irrevocably assigns to ETQ all right, title, and interest in and to the Feedback including all intellectual property rights therein and agrees to provide ETQ any reasonable assistance ETQ may require (at ETQ's expense) to document, perfect, and maintain its rights in the Feedback.

4. PRICE AND PAYMENT.

4.1. Payment. Customer shall pay ETQ the fees and other specified charges set forth in Order Forms. All fees will be invoiced in full up front, and unless otherwise set forth in the applicable Order Form, such fees shall be due and payable within thirty (30) days after the date of ETQ's invoice. Each applicable Order Form shall be made in U.S. Dollars. All such fees are non-refundable except as expressly provided in the Agreement. Customer shall pay a late charge of the lesser of one and one-half percent (1.5%) per month and the highest amount allowed by law, on all amounts not paid to ETQ when due hereunder. Customer shall reimburse ETQ for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. ETQ may suspend its performance hereunder, in whole or in part, if Customer has failed to pay any amounts due or is otherwise in material breach of the Agreement, until such breach is cured.

4.2. Taxes. The fees and all other amounts due to ETQ as set forth in the applicable Order Form are net amounts to be received by ETQ, exclusive of all taxes, duties, and assessments, including all sales, withholding, VAT, GST, excise, ad valorem, and use taxes, (collectively, "**Taxes**") and are not subject to offset or reduction because of any Taxes incurred by Customer or otherwise due as a result of the Agreement. Customer shall be responsible for and shall pay directly, any and all Taxes relating to the performance of the Agreement, provided that this Section 4.2 shall not apply to taxes based solely on ETQ's income. Customer hereby confirms that ETQ can rely on the ship-to name and address set forth in the Order Form(s) or Work Order Customer places directly with ETQ as being the place of supply for the purpose of Taxes.

5. COMPLIANCE. ETQ shall have the right to access Customer's instance(s) of the Services during the term of the Agreement as necessary to provide the Services, administrative activities, customer support, and other activities, which Customer acknowledges are essential in order for ETQ to meet its obligations hereunder. In addition, during the term of the Agreement and for one (1) year thereafter, ETQ (itself or in conjunction with independent auditors retained by it and subject to obligations of confidentiality) shall have the right to examine Customer's instance of the Services, Customer Data and other records and information relating to Customer's use of the Services, in order to confirm Customer's compliance with the terms of the Agreement. ETQ shall not, in the conduct of its examination, unreasonably interfere with Customer's business operations. If this examination reveals that Customer has used the Services in violation of the Agreement, such conduct shall be considered a material breach of the Agreement, which Customer shall immediately cure (if capable of cure), and ETQ may terminate the Agreement in accordance with Section 6.1 (Termination).

6. TERM AND TERMINATION

6.1. General. The Agreement commences on the Effective Date and continues until the earlier of (a) all Services hereunder have expired or have terminated or (b) termination by either party as expressly permitted by the Agreement.

6.2. Subscription Term. EXCEPT AS OTHERWISE SPECIFIED IN AN ORDER FORM, THE SUBSCRIPTION TERM SHALL AUTOMATICALLY RENEW AND BE EXTENDED UPON ITS EXPIRATION (REGARDLESS OF WHETHER PREVIOUSLY RENEWED OR EXTENDED), FOR A PERIOD OF THE SAME DURATION AS THE SUBSCRIPTION TERM ON THE APPLICABLE ORDER FORM UNLESS THE AGREEMENT IS TERMINATED BY EITHER PARTY PURSUANT TO SECTION 6.3 OR EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST THIRTY (30) DAYS PRIOR TO THE SCHEDULED END OF THE THEN-CURRENT SUBSCRIPTION TERM. THE FEES APPLICABLE TO ANY RENEWED OR EXTENDED SUBSCRIPTION TERM SHALL INCREASE UP TO 7% ABOVE THE APPLICABLE PRICING OF THE IMMEDIATELY PRECEDING SUBSCRIPTION TERM UNLESS ETQ PROVIDES CUSTOMER DIFFERENT PRICING AT LEAST THIRTY (30) DAYS PRIOR TO THE RENEWAL TERM.

6.3. Termination. The Agreement and the right to use the Services may be terminated as follows: (a) by ETQ immediately, at its option, upon written notice to Customer in the event of a material breach by Customer of the confidentiality, license or other terms protecting the Services or Documentation or a violation or misappropriation by Customer of ETQ's intellectual property or rights therein; (b) by either party upon thirty (30) days' prior written notice to the other party in the event of a material breach by the other party of any terms and conditions of the Agreement, and the failure to cure such material breach during such thirty (30) day period, except in the case of Customer's failure to pay any amount when due under the Agreement, in which case the cure



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period shall be fifteen (15) days; or (c) by either party immediately upon written notice to the other party in the event the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

6.4. Effects of Termination. Upon termination of the Agreement, all rights and licenses granted in the Agreement to Customer shall terminate immediately. Immediately upon such termination, Customer and its Affiliates and its and their Active Users shall: (a) cease all use of the Services; (b) return to ETQ all copies of the Services and Documentation (if any) and any other Confidential Information of ETQ; and (c) delete all copies of the Services and Documentation contained on any computer and storage media under Customer's control (if any). Termination of the Agreement shall not relieve Customer of any unmet payment obligations.

6.5. Survival. Upon termination of the Agreement, the following Sections shall continue and survive in full force and effect: Definitions, 1.8 (Modifications), 3.1 (ETQ's Intellectual Property), 3.3 (Suggestions; Feedback), 4 (Price and Payment), 5 (Compliance), 6.4 (Effects of Termination), 6.5 (Survival), 7.2 (Exclusions), 7.4 (Warranty Limitations), 8 (Confidentiality), 9 (Indemnification), 10 (Limited Liability), 11 (U.S. Government Restricted Rights), and 12 (General Provisions).

7. LIMITED WARRANTY.

7.1. Warranty. ETQ warrants, for Customer's benefit alone, for the applicable Subscription Term, the Service will substantially conform to descriptions contained in Documentation for the same.

7.2. Exclusive Remedy. ETQ's entire liability and Customer's sole and exclusive remedy for the breach of ETQ's warranty in Section 7.1 (Warranty) shall be for ETQ to use commercially reasonable efforts to correct such nonconformance. To receive the foregoing remedies Customer must report any alleged breach of warranty to ETQ in writing and in reasonable detail within the applicable Subscription Term.

7.3. Exclusions. The warranty set forth in Section 7.1 (Warranty) does not cover any Services that has been altered, misused or damaged in any way by Customer or any third party, and it does not apply to and ETQ is not responsible for, problems caused by the operating characteristics of any computer hardware or operating system for which the Services are procured or which occur as a result of the use of the Services in conjunction with software of third parties or with hardware which is incompatible with the operating system for which the Services are being procured, or that have been modified or configured by Customer, or if Customer uses the Services in a manner contrary to that described or recommended in the Documentation, including any recommended software or equipment, or to the extent due to the problems within or impacting Customer's computing environment.

7.4. Warranty Limitations. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 7.1 (WARRANTY), AND EXCLUDING ANY WARRANTIES EXPRESSLY SET FORTH IN ANY OTHER APPLICABLE PUBLISHED TERMS AND CONDITIONS, NEITHER ETQ NOR ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, OR AFFILIATES MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ANY OF ITS AFFILIATES, OR TO ANY OTHER PARTY WITH RESPECT TO THE SERVICES OR DOCUMENTATION, OR OTHERWISE REGARDING THE AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED AND DISCLAIMED. ETQ DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE SERVICES ARE WITHOUT DEFECT OR ERROR, OR THAT THE SERVICES WILL OPERATE WITH ANY HARDWARE OR SOFTWARE NOT SPECIFIED IN THE DOCUMENTATION.

8. CONFIDENTIALITY.

8.1. General. Effective retroactive to the date a party first disclosed Confidential Information to the other, each Receiving Party will hold in confidence and, without the consent of the Disclosing Party, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the Disclosing Party except as expressly permitted hereunder. The Receiving Party of Confidential Information may disclose the Confidential Information only to its employees, agents and independent contractors with a need to know the information in connection with the performance of the Agreement or exercise of rights thereunder, provided that any such employees, agents and independent contractors shall first be subject to written obligations of confidentiality to protect Confidential Information in a manner consistent with the Agreement and the Receiving Party shall be responsible to the Disclosing Party for any damages for unauthorized use, disclosure, duplication or other misuse of the Confidential Information resulting from its possession by a third party. Without limiting the foregoing, the Receiving Party of the Confidential Information agrees that it will exercise at least the same standard of care in protecting the confidentiality of the Disclosing Party's Confidential Information as it does with its own Confidential Information of a similar nature, but no less than a reasonable degree of care. ETQ shall not be liable for breach of its obligations of confidentiality thereunder resulting from unauthorized intrusion into, disclosure of or access to Customer Data, or any security breach affecting Customer Data, absent the gross negligence or intentionally wrongful conduct of ETQ employees. Each party may disclose the existence of the Agreement and its general nature, but not its specific terms, without the prior written consent of the other party; provided that, ETQ may disclose the Agreement and its specific terms to any person in connection a prospective sale of any portion of ETQ's business.



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8.2. Exceptions. Confidential Information shall not include information if and only to the extent that the Receiving Party establishes that the information: (a) is or has become a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) was lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. If required by a lawful, validly issued subpoena, order of a court of competent jurisdiction, or request for information from a governmental agency, the Receiving Party may disclose only that part of the Confidential Information of the Disclosing Party that it is legally required to disclose, in the opinion of the Receiving Party's legal counsel, and shall, to the extent not prohibited by law, notify the Disclosing Party prior to such disclosure in order to provide the Disclosing Party an opportunity to seek an appropriate protective order or other judicial relief to prevent such disclosure. Notwithstanding the foregoing, the Receiving Party shall cooperate (at the Disclosing Party's expense) in all efforts of the Disclosing Party to prevent disclosure of the Disclosing Party's Confidential Information.

8.3. Representatives. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party to its third party legal or financial advisors under existing legal obligations of confidentiality or in connection with litigation or other dispute resolution attempts between the parties. To the extent any such advisors may not be under an existing legal obligation of confidentiality, such advisor shall sign an appropriate form of confidentiality agreement containing obligations of confidentiality substantially the same as those set forth in this Section 8 (Confidentiality).

8.4. Remedy. Each party acknowledges that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the other party irreparable damage for which remedies other than injunctive relief may be inadequate, and each party agrees that the other party shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure in addition to other appropriate remedies.

8.5. Term of Confidentiality Obligations. Each party's obligations under this Section 8 (Confidentiality) shall survive the termination of the Agreement for a period of ten (10) years, except with respect to trade secrets of a party, in which case such obligations with respect to Confidential Information constituting a trade secret shall survive the termination of the Agreement for a period of time as such trade secret remains a trade secret under applicable law.

9. INDEMNIFICATION.

9.1. By ETQ. ETQ shall defend, indemnify and hold harmless Customer against claims from a third party that the Services infringes a valid U.S. patent in existence as of the Effective Date or copyright. If ETQ determines that the affected Services are likely, or if the Services are determined in a final, non-appealable judgment by a court of competent jurisdiction, to, infringe such a patent or copyright, ETQ will have the option, in ETQ's sole discretion, to elect one or more of the following: (a) replace such affected Services; (b) modify such affected Services to be non-infringing; or (c) terminate this Agreement, in which case ETQ agrees to refund the Subscription fees paid by Customer for the affected Services, for the remaining applicable Subscription Term. No undertaking of ETQ under this Section 9.1 shall extend to any alleged infringement or violation to the extent that it: (A) arises from adherence to any design modification, specification, or written instruction that ETQ is directed by Customer to follow; (B) relates to uses of the Services in combination with other products furnished either by Customer or others, which combination was not approved by ETQ in writing; or (C) relates to modifications to the Services made by someone other than ETQ or ETQ's authorized agents; or (D) relates to use of other than the then-current version of the Services. Subject to Section 10 (Limited Liability), this Section 9 (Indemnification) states ETQ's entire liability and Customer's exclusive remedy for any claim of infringement.

9.2. By Customer. Customer shall defend, indemnify and hold harmless ETQ and its licensors from and against any claims, actions, demands, lawsuits, damages, liabilities, settlements, penalties, fines, costs and expenses (including reasonable attorneys' fees) to the extent arising from: (i) Customer's use of the Services; (ii) violation by Customer of any right of a third party; (iii) the Customer Data; or (iv) Customer's failure to comply with any laws, rules, or regulations; in each case except to the extent that ETQ indemnifies Customer pursuant to Section 9.1 (By ETQ).

9.3. Conditions. This right of indemnification set forth in this Section 9 (Indemnification) applies only if: (i) the party receiving the indemnification (the "**Indemnified Party**") provides the party providing the indemnification (the "**Indemnifying Party**") notice of such claim or cause of action sufficient to avoid prejudicing the Indemnifying Party's ability to defend the claim or cause of action; (ii) the Indemnifying Party is given sole control of the defense and all related settlement negotiations relating to such claim or action; and (iii) the Indemnified Party provides reasonable assistance and cooperation to enable the Indemnifying Party to defend the action or claim hereunder. Neither Party shall be responsible for any settlement of any claim or cause of action made without its written consent.

10. LIMITED LIABILITY.

10.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, ETQ'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, BASED ON ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, WHETHER RELATING TO THE SERVICES OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF APPLICABLE FEES PAID TO ETQ UNDER THE APPLICABLE ORDER FORM FOR THE SERVICES



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GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

10.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL ETQ, ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT OR AFFILIATES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING RESULTING FROM UNAUTHORIZED ACCESS TO, OR THE ALTERATION, DELETION, DESTRUCTION, DAMAGE, LOSS, DISCLOSURE, UNAVAILABILITY OR NON-STORAGE OF DATA, OR FROM DELAYS, LOSS OF PROFIT, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, BASED ON ANY THEORY OF LIABILITY, WHETHER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, WHETHER RELATING TO SERVICES OR OTHERWISE, EVEN IF ETQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY OF ITS ESSENTIAL PURPOSE.

10.3. THE PROVISIONS OF SECTIONS 10.1 AND 10.2 ARE FUNDAMENTAL AND SPECIFIC REQUIREMENTS OF THE BASIS OF THE BARGAIN BETWEEN ETQ AND CUSTOMER AND ETQ WOULD NOT BE ABLE TO ENTER INTO THE AGREEMENT WITHOUT SUCH PROVISIONS.

11. U.S. GOVERNMENT RESTRICTED RIGHTS. The Services and Documentation are provided with RESTRICTED RIGHTS and constitute "Restricted Computer Software". "**Restricted Computer Software**," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial, and is confidential or privileged; or is unpublished copyrighted computer software, including minor modifications of any such computer software. Use, duplication or disclosure by the U.S. Government, its agencies or instrumentalities, is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer software clause at 48 C.F.R. 252.227-7013 or subparagraphs (i) (1) and (2) of the Commercial Computer Software Restricted Rights of 48 C.F.R. 52.227-b19, as applicable, or their respective successor provisions. In addition, or alternatively, at ETQ's option, all software and software-related items licensed herein are "Commercial Computer Software" or "Commercial Computer Software Documentation" as defined in FAR 12.212 for civilian agencies and DFARS 227.7202 for military agencies, as applicable, or their respective successor provisions. The contractor/developer of all Services and the Documentation is ETQ, LLC, 700 District Ave, 8th Floor, Burlington, MA 01803. Tel.: 800.354.4476 . The intent of the parties is that no intellectual property rights or confidentiality of the Services and Documentation are lost, diminished or transferred as a result of the execution of the Agreement. *For purposes of use by or for the benefit of the U.S. Government, all Services and Documentation are unpublished – rights reserved under the Copyright laws of the United States.*

12. GENERAL PROVISIONS.

12.1. Assignment. Customer may not assign, sublicense, or otherwise transfer the Agreement or any of its rights or obligations under the Agreement, without the prior written consent of ETQ; provided, however, that Customer may, upon Notice to ETQ, assign the Agreement without ETQ's consent in the event of a sale of all or substantially all of its assets or in the event of a merger, corporate reorganization or business consolidation of Customer (but excluding any assignment, sublicense or other transfer by Customer to a competitor of ETQ). In the event of a permitted assignment by Customer of the Agreement, the rights granted to Customer under the Agreement would continue to be subject to the restrictions and limitations specified therein, including a situation where rights are limited to a specific business unit, line, group, division, department or other organizational entity of Customer. The Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives and permitted transferees, successors and permitted assigns. Notwithstanding the foregoing or anything in the Agreement to the contrary, any assignment, sublicense or transfer of the Agreement or attempt to do so in violation of this section shall be null and void ab initio and entitle the non-assigning party to immediately terminate the Agreement upon notice and without liability.

12.2. Compliance with Laws. Unless expressly stated in the Agreement, Customer shall not use or export (electronically or otherwise) the Services or Documentation outside of the U.S. other than in compliance with all applicable U.S. export laws, rules, and regulations. Customer shall be solely responsible for such compliance. Customer agrees to keep such books and records and to take such other actions as may be required by such applicable laws, rules and regulations.

12.3. No Waiver. No delay or failure in exercising any right under the Agreement and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights thereunder. No consent to a breach of any express or implied term of the Agreement shall constitute a consent to any prior or subsequent breach.

12.4. Notices. All notices under the Agreement shall be in writing. Notices shall be given personally, electronically via email, or sent by traceable postal service mail, e.g., certified or registered mail, or express courier (e.g., FedEx, UPS or DHL). Notices shall be deemed given and received: (a) upon delivery, if given personally; (b) as indicated in the applicable tracking information when an express courier is used; (c) two (2) business days after deposit by the sender with its national postal service (or the recipient's national postal service if the sender elects) with the proper postage affixed, if sent by mail (or as otherwise indicated in the national postal service's tracking information, if applicable); or (d) upon transmission if sent by email. Notices shall be addressed to each party at its address set forth in the initial paragraph of the Agreement, or by email to ETQ's legal department at legal@etq.com or to Customer's authorized representative or administrator identified in the applicable Order Form, which the parties may change for the purpose of receiving notice by compliance with this Section 12.4.



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12.5. Severability. If any provision or portion thereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of the Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

12.6. Force Majeure. Notwithstanding anything in the Agreement to the contrary, except for payment obligations, neither party will be liable for any breach of the Agreement or resulting damages from delay or failure with respect to any obligation thereunder, nor for any damages or loss of any kind, resulting from causes beyond its reasonable control, including acts of God, earthquake, storms or other elements of nature, labor disputes, blockages, embargoes, riots or other industrial disturbances, mechanical, electrical, electronic, telecommunications, Internet or other third party supplier delay or failure, acts or orders of any governmental authority, criminal acts, war or terrorism, including cyberattack or other malicious intrusion into or breach of security with respect to data or computer systems.

12.7. Governing Law. The Agreement shall be interpreted and construed in accordance with the laws of the State of Massachusetts. Any and all claims, controversies and causes of action arising out of relating to the Agreement, whether sounding in contract, tort, or statute, shall be governed by the internal laws of the State of Massachusetts, including its statutes of limitations, without giving effect to any laws or other rules that would result in the application of the laws or statutes of limitations of a different jurisdiction. Customer consents to the exclusive jurisdiction and venue of the state or federal courts in the State of Massachusetts.

12.8. Complete Agreement. The Agreement supersedes in full all prior discussions and agreements, oral and written, between the parties relating to the subject matter hereof, and constitutes the entire understanding of the parties with respect to such subject matter. No additional terms and conditions proposed by Customer, whether electronically or otherwise or associated with any Order Form or otherwise, shall be applicable to the Agreement or any ETQ products or services at present or in the future, absent the express written consent thereto by ETQ. If ETQ has commenced Services at Customer's request in connection with the matters described in any Order Form or proposal for Services, or request for proposal, all provisions of the Agreement as originally proposed by ETQ shall apply to such activities even if the Order Form has not been formally executed by both parties.

12.9. Amendment or Modification. No amendment or modification of the Agreement shall be valid or binding upon the parties unless it is in writing and signed by the duly authorized officers of the parties.

12.10. No Third Party Benefit. Except with respect to (a) any confidentiality obligation protecting the Services or Documentation contained in an agreement between Customer and a third party, to which ETQ shall be deemed a third party beneficiary, and (b) any third party indemnified under Section 9 (Indemnification), the provisions of the Agreement are for the sole benefit of the parties hereto and the Agreement neither confers any rights, benefits, or claims upon any person or entity not a party hereto nor precludes any actions against, or rights of recovery from, any persons or entities not parties hereto.

12.11. Conflicts. In the event of any conflict between the terms and conditions of this MSA and those contained in or referenced in an Order Form, the terms and conditions in this MSA shall prevail over the terms and conditions in or referenced in the Order Form unless the Order Form or such other terms and conditions make specific reference to the section in this MSA that it supersedes. In the event of a conflict between the terms and conditions referenced in an Order Form and the terms and conditions contained in an Order Form, the terms and conditions referenced in the Order Form shall prevail unless the Order Form makes a specific reference to the section in the terms and conditions that it supersedes.

12.12. Subcontractors. Notwithstanding anything to the contrary in the Agreement, ETQ may retain subcontractors to perform any of its obligations under the Agreement. ETQ shall remain responsible for the performance of such obligations by its subcontractors.

12.13. Terms Generally. The defined terms in the Agreement shall apply equally to both the singular and the plural forms of the terms defined. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written." The term "or" shall not be deemed to be exclusive. The word "access" as it relates to the Services or Documentation shall be interpreted to presume use of same unless expressly stated to the contrary.

12.14. Construction. The captions in the Agreement are for convenience of reference only and shall not be used to interpret the Agreement. References in this MSA to a particular section are references to the section of this MSA. References in a document that is part of the Agreement to a particular section are references to the section of such document. All dollar amounts stated in the Agreement are in U.S. dollars.